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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR MOUSTIRATS,

Defendant and Appellant.

D043948

(Super. Ct. No. SCN165023)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

The petition for rehearing is denied.

It is ordered that the opinion filed on January 12, 2005, be modified to add the following footnote at the end of the first full paragraph on page 8, as follows:

On a petition for rehearing, Moustirats argues that his consecutive sentences violate the principles set forth in *Blakely v. Washington* (2004) 542 U.S. ____ [124 S.Ct. 2531] (*Blakely*). We reject the argument. *Blakely* has no application because California's sentencing scheme confers no right on defendant to concurrent sentencing. (See *People v. Reeder* (1984) 152 Cal.App.3d 900, 923.) Absent a statutory presumption in favor of a

concurrent sentence, a jury verdict finding the defendant guilty of more than one offense implicitly authorizes a consecutive sentence for each of those offenses. The lack of statutory entitlement to a particular sentence "makes all the difference insofar as judicial impingement upon the traditional role of the jury is concerned." (*Blakely, supra*, 124 S.Ct. at p. 2540.)

There is no change in the judgment.

Copies to: All parties

HALLER, Acting P, J.